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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,814	01/14/2002	Gary L. Schroeder	2336	6017
	7590 04/14/2004		EXAMINER	
Robert S. Alexander Georgia-Pacific Corporation 1915 Marathon Avenue P.O. Box 899 Neenah, WI 54957-0899			TSOY, ELENA	
			ART UNIT	PAPER NUMBER
			1762	

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/051,814	<b>Applicant(s)</b> SCHROEDER ET AL.	
	<b>Examiner</b> Elena Tsoy	<b>Art Unit</b> 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
     a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. Amendment filed on March 8, 2004 has been entered. Claims 1-39 are pending in the application. Claims 1-23, 34-39 are withdrawn from consideration as directed to a non-elected invention.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 24-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Noda et al (US 4,785,030).

Pregozen discloses a method for making a moist wipe for delivering a cationic functional agent in an aqueous medium (See column 1, lines 10-15) to an animate or inanimate surface for a desired efficacy (See column 3, lines 21-22), which comprises forming a bonded non-woven web of adequate wet strength (See column 5, line 4) comprising cellulosic fibers (See column 4, lines 63-68) using non-woven binders (See column 5, lines 2-4), and adding about two to five times the dry weight of the web an aqueous imbueiment carrying a cationic functional agent such as polymeric cationic biocide having molecular weight of 1000-1400 (See column 3, lines 61-63) or monomeric cationic biocide such as cetylpyridinium chloride (See column 7, lines 19, 27-35) at a concentration of about 0.03-0.24 % weight (active basis) of the aqueous composition (which is less than 6 milli-equivalents per liter) (See column 4, lines 10-13).

Pregozen fails to teach that an anionic surface charge of the web containing cellulosic fibers is not greater than 1.2 meq per kilogram (Claim 24); a non-woven binder contains non-ionic surfactant (Claim 26) or cationic surfactant (Claim 27).

Noda et al teach that cationically modified styrene-butadiene latexes especially with nonionic or preferably cationic surfactants added to the latex to have adequate colloidal stability, can be used as a binder for treating cellulosic fibers to provide the desired wet strength by binding to negatively charged cellulosic fibers (See column 1, lines 13-18, 51-57; column 2, lines 3-25, 54-69). In other words, Noda et al teach that cationically modified styrene-butadiene latexes especially with nonionic or preferably cationic surfactants are suitable for treating cellulosic fibers to provide the desired wet strength.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used cationically modified styrene-butadiene latexes added thereto nonionic or preferably cationic surfactants as a binder in Pregozen since Noda et al teach that cationically modified styrene-butadiene latexes especially with nonionic or preferably cationic surfactants are suitable for treating cellulosic fibers to provide the desired wet strength.

It is held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious); *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

The Examiner's Note: clearly an anionic surface charge of the web containing cellulosic fibers after binding to them cationic latex would be not greater than 1.2 meq per kilogram.

4. Claims 31, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Noda et al (US 4,785,030), further in view of Rabasco et al (US 2002/0099113).

Pregozen in view of Noda et al, as applied above, fail to teach that cationic biocide is benzalkonium chloride.

Rabasco et al teach that cetylpyridinium chloride is functionally equivalent to benzalkonium chloride for their use as cationic biocide (See [0024]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used instead of cetylpyridinium chloride biocide in Pregozen in view of Noda et al since Rabasco et al further teach that cetylpyridinium chloride is functionally equivalent to benzalkonium chloride for their use as cationic biocide, and the selection of any of these known material as cationic biocide in Pregozen in view of Noda et al would be within the level of ordinary skill in the art.

5. Claims 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Noda et al (US 4,785,030), further in view of Mochizuki et al (US 4,675,347).

Pregozen in view of Noda et al, as applied above, fail to teach that the monomeric cationic biocide is benzethonium chloride.

Mochizuki et al teach that benzethonium chloride is suitable for the use as cationic biocide in aqueous compositions (See column 5, lines 55, 59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used benzethonium chloride as cationic biocide in Pregozen in view of Noda et al since Mochizuki et al teach that benzethonium chloride is suitable for the use as cationic biocide in aqueous compositions.

### *Response to Arguments*

6. Applicants' arguments filed March 8, 2004 have been fully considered but they are not persuasive.

Applicants argue that Pregozen teaches away from monomeric cationic biocides because at co. 7, lines 42-45, Pregozen concludes: "In each case the moistened wipes obtained had an unacceptable slippery feel which rendered them unsuitable for marketing."

The Examiner respectfully disagrees with this argument.

It is held that PATENTS ARE RELEVANT AS PRIOR ART FOR ALL THEY CONTAIN. See *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir.1998) (The court held that the prior art anticipated the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed."). NONPREFERRED EMBODIMENTS CONSTITUTE PRIOR ART. **Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments.** See MPEP 2123. Therefore, Pregozen does teach monomeric cationic biocides whether moistened wipes obtained had an unacceptable slippery or not.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (571) 272-1429. The examiner can normally be reached on Mo-Thur. 9:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (571) 272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elena Tsoy  
Examiner  
Art Unit 1762

April 8, 2004